



Southern Region

EI-18324

Paul E. Ladue
Region Director Contracts and Administration

www.cn.ca

17641 So. Ashland Avenue
Homewood, IL 60430-1345
T 708.332.5475
F 708.332.3673

August 23, 2010

Mayor Bill Whalen
City of Ashland
601 Main Street West
Ashland, WI 54806

RE: Ashland Ore Dock: Permit and License dated July 16, 2010

Dear Mayor Whalen:

In response to your communication of July 16, 2010, regarding the ore dock demolition permit and license, I must inform you that, from CN's perspective, neither of these documents is yet in an acceptable and workable form for a variety of reasons as was previously communicated to you on June 23 and again in our conversation on July 12. We would appreciate the opportunity to explain to you in person our position.

As you are aware, the April 2010 permit draft that the previous Mayor and his staff had negotiated represented over 14 months of negotiations with CN and had only one issue remaining to resolve. Specifically, this was an issue that Scott Clark had raised and to which CN offered language on April 16, 2010 to accommodate Mr. Clark's concern. Subsequently, over the past several months, you made requests of CN and, on your representation to me that you only had a couple of very minor changes in the draft permit negotiated with your predecessor, CN repeatedly accommodated your requests such as granting an extension of the NITU trail permit, allowing the City to pave over a portion of CN property without an executed easement, sharing CN's water test results, agreeing to exchange CN property of equal value in place of road repair expenses, and working with the City toward a potential reuse of the "pier" portion of the dock. I took these actions in the spirit of cooperation and based on your representation that there would be very few changes to the permit draft negotiated with the previous Mayor and his staff.

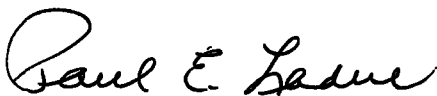
After more than a year of negotiations between CN and the City, we had every expectation that we would soon receive a permit reflecting those good-faith deliberations that would be acceptable to both parties especially since we have received the go-ahead from every other required permitting agency. Unfortunately, the June 22, 2010 permit draft you sent me was a substantial step backwards. After initially receiving that draft, I indicated a willingness to travel to Ashland to meet with you and appropriate city representatives to discuss revisions and work out a permit acceptable to both parties, but you did not respond to CN's requests for meetings.

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After having engaged in negotiations with the City for over a year, I was disappointed that your version of the permit was presented to the Ashland City Council on June 13th before we had reached agreement, particularly since you were aware in advance of the Council meeting that your version was unacceptable to CN. I am also concerned about several misrepresentations that were made to the Council. For example, you indicated to the City Council that you had reached agreement with CN regarding issues related to water quality, insurance and liability. In fact, you discussed none of these topics with CN. Instead, you unilaterally removed the water quality and testing process that had been previously agreed to which defined the standards in accordance with Wisconsin State water quality and which provided CN and the City with a procedure for the project to continue in the event that any change in water quality was not linked to the dock demolition. In addition, several insurance and indemnification changes were made that are either redundant or make little sense such as requiring CN to purchase insurance covering FELA claims (covers railroad employees only) and \$10 million coverage even though the contract already requires the contractors (Veit and Mavo) to add the City as an additional insured on their own policy of equal coverage. In addition, although CN already agreed to indemnify the City, you have included a provision that requires CN to indemnify trespassers and non-parties to the demo permit. Also, CN agreed to pay for wear and tear to the streets that we will be leasing from the City, yet the permit you sent proposes unfair conditions on CN that the City does not impose on the thousands of other trucks that use City haul routes.

We remain willing to travel to Ashland to meet with you and your staff to discuss revisions and work out a permit that will be acceptable to both parties. As we have not had the opportunity to date to meet personally with you on this matter, I hope that you will now agree to meet with CN. If you are willing to meet, please provide me with some dates that would be convenient for you. In the meantime, please contact me if you have any questions.

Sincerely,



Paul E. Ladue
Region Director Contracts & Administration

CC:

Mr. Steve Hosier
Demolition Division Manager
Veit Speciality Contracting
14000 Veit Place
Rogers, MN 55374-9583

Mr. John Kraskey
Operations Manager
Mavo Systems
98 Pionk Drive
Proctor, MN 55810

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CC: Ashland City Council

Ms. Linda Scott
3003 Golf Course Road
Ashland, WI 54806

Mr. James Melin
514 12th Avenue West
Ashland, WI 54806

Mr. Jerry Teague
1416 7th Street West
Ashland, WI 54806

Mr. Roland Peterson
1503 9th Avenue West
Ashland, WI 54806

Mr. Carl Doersch
1016 MacArthur Avenue
Ashland, WI 54806

Ms. Joyce Kabasa
215 N. Prentice Avenue
Ashland, WI 54806

Mr. Patrick Kinney
1119 2nd Ave. West
Ashland, WI 54806

Mr. Michael Benton
314 2nd Ave. E.
Ashland, WI 54806

Mr. David Eades
511 7th Avenue East
Ashland, WI 54806

Mr. Dick Pufall
1203 Main Street East
Ashland, WI 54806

Mr. Chris O'Connell
2805 Holmes Road
Ashland, WI 54806

Mr. Troy Brady
Surface Transportation Board
395 E Street SW,
Washington, DC 20423-0001

Mr. John Spangberg
WDNR, Northern Region Headquarters
810 W. Maple St.
Spooner, WI 54801

Mr. Jason Berkner
Corps of Engineers
15954 River's Edge Drive, Ste 240
Hayward, WI 54843

Mr. Sherman Banker
Wisconsin Historical Society
816 State Street
Madison, WI 53706

Mr. Doug Wood
Office of the Commissioner of Railroads
PO Box 7854
Madison, WI 53707-7854

USCG, Ninth Coast Guard District
1240 E 9th Street
Cleveland, OH 44199-2060